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COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

LILIANA R.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Real Party in Interest.

D061593

(San Diego County
Super. Ct. No. EJ3217B)

PROCEEDINGS for extraordinary relief after reference to a Welfare and
Institutions Code section 366.26 hearing. Ronald F. Frazier, Judge. Petition denied;
request for stay denied.

Liliana R. seeks writ review of a juvenile court order terminating reunification services as to her minor daughter, L.R., and setting a hearing under Welfare and Institutions Code¹ section 366.26. She contends the court erred by not continuing her reunification services to the 18-month date and by denying her request for unsupervised visits with L.R. We deny the petition and Liliana's request for a stay.

FACTUAL AND PROCEDURAL BACKGROUND

In August 2009, when Liliana was four months pregnant with L.R., she was involved in a domestic violence incident with L.R.'s father, Robert M. Liliana's three-year-old daughter Linda was present at the time. The San Diego County Health and Human Services Agency (Agency) intervened, and Liliana agreed to participate in voluntary services that included a safety plan, but she refused to obtain a restraining order against Robert. Four months later, Liliana and Robert were involved in another incident of domestic violence. Robert was arrested for battery, even though Liliana denied that he hit her. There was some indication Liliana was using illegal drugs.

L.R. was born in February 2010. Agency filed a petition in the juvenile court under section 300, subdivision (b) alleging L.R. was at substantial risk of harm as a result of her parents' domestic violence and Liliana's failure to participate in her voluntary case plan and obtain a restraining order against Robert. At a jurisdiction and disposition hearing, the court sustained the allegations of the petition, declared L.R. a dependent, and

¹ Statutory references are to the Welfare and Institutions Code.

placed her with Liliana. This placement was conditioned on Liliana participating in her case plan and abiding by a three-year restraining order against Robert.

During the next six months, Liliana participated in services and made some progress. However, Agency learned she was spending time with Robert, and had taken L.R. to visit him in jail on numerous occasions. In February 2011, the court sustained the allegations of a section 387 supplemental petition, finding L.R.'s placement with Liliana was not effective in protecting her because Liliana had violated the restraining order. The court removed L.R. from Liliana's custody, placed her with a non-relative extended family member and ordered reunification services for Liliana.

In April 2011, Liliana allowed Robert to spend the night with her. The police responded to a call from a neighbor who reported that Liliana and Robert had been arguing. Liliana denied anyone else was in the apartment, but the police found Robert hiding in a closet and arrested him. The next month, Liliana was evicted from her apartment. She continued to have supervised visits with L.R. and participate in services. She met only some of her therapy goals and had limited understanding of the impact of domestic violence. Liliana's level of insight had decreased during this reporting period. In the social worker's opinion, Liliana did not have adequate skills or an understanding of the protective issues to protect L.R. from domestic violence. The social worker recommended the court terminate Liliana's services and set a section 366.26 hearing to select and implement a permanent plan for L.R.

In September 2011, Liliana contacted the social worker to report she had been arrested earlier that week for driving under the influence of alcohol. She minimized the

amount of beer she had consumed. Liliana did not bring the social worker the requested documentation regarding the status of her driver's license.² Liliana also did not submit to an on-demand drug test the day she met with the social worker.

At a six-month review hearing, the court found Liliana had made some progress with her case plan and ordered services extended to the 12-month date. Liliana's case plan was revised to include services designed to address her alcohol problem.

One month before the 12-month hearing, Liliana and a 16-year-old male were arrested for stealing merchandise from stores at a shopping center. Liliana misinformed the social worker about the charges having been dropped. Liliana eventually pleaded guilty to a theft-related crime. Her substance abuse specialist referred her to dependency drug court after Liliana disclosed she had consumed alcohol on New Year's Eve. The social worker again recommended the court terminate Liliana's services and set a section 366.26 hearing.

At a contested 12-month hearing, social worker Eunice Aguilar testified Liliana had been receiving services for more than two years, and yet her visits with L.R. remained supervised. Liliana had completed domestic violence treatment, was regularly attending individual therapy and a substance abuse program, and was enrolled in a parenting class. Nevertheless, Aguilar did not believe Liliana had made significant progress on her reunification plan because she continued to make bad decisions for which

² Agency later discovered Liliana pleaded guilty to driving under the influence of alcohol. Her right to drive was suspended for a year and her license was restricted for a year.

she took no responsibility and she was unable to understand the consequences of her behavior for herself or L.R. On many occasions, Liliana lied to Aguilar or misled her. Liliana's pattern of poor decision-making included an arrest for driving under the influence of alcohol after she set the six-month review for trial. She showed poor judgment by not calling the substance abuse specialist to say she could not attend her intake appointment. A month before the 12-month hearing, she and her teenage companion committed burglary. In Aguilar's opinion, Liliana did not understand her responsibility as an adult, and as a parent, to make good decisions and set a good example for children. Despite having had ample time to make positive and significant changes in her life, Liliana continued to behave in a way that showed she could not provide a safe environment for L.R.

Liliana's therapist, Brenda Mack, testified Liliana had made progress in that she was aware of how domestic violence impacted L.R., and she now had more insight into her role as a parent. In Mack's opinion, Liliana could meet her therapeutic goals in the next four months, but it would be difficult for her to do so if her visitation with L.R. did not become unsupervised.

Jacqueline Arellano, Liliana's substance abuse counselor, testified Liliana started treatment in November 2011 and was placed on a behavioral contract due to poor attendance. Following her burglary arrest, she became compliant with the program. In Arellano's opinion, Liliana would complete the year-long substance abuse program. Arellano observed visits between Liliana and L.R., noting they were appropriate. She would not be concerned about allowing Liliana to have unsupervised visits.

Liliana testified she had grown up and matured since spending three days in custody for the burglary. She admitted she had waited two months before complying with the court's order to enroll in substance abuse treatment. Liliana attributed her recent positive change to her participation in the parenting program.

After considering the evidence and arguments of counsel, the court found returning L.R. to parental custody would create a substantial risk of detriment to her. Finding Liliana had received reasonable services and there was no substantial probability L.R. would be returned to her custody in the next six months, the court terminated services and set a section 366.26 selection and implementation hearing.

Liliana sought review of the court's order. (§ 366.26, subd. (l); Cal. Rules of Court, rule 8.452.) This court issued an order to show cause and Agency responded. The parties waived oral argument.

DISCUSSION

I

Liliana contends the court erred by refusing to extend reunification services to the 18-month review date under section 366.21, subdivision (g)(1). She asserts: (1) she visited L.R. frequently and they were very bonded; (2) she made significant progress in resolving the protective issues; and (3) she had the capacity and ability to complete the objectives of her treatment plan, and could provide for L.R.'s safety and physical and emotional well-being.

A

"Whenever a minor is removed from parental custody, the juvenile court must, in the absence of certain specified exceptions, order the social worker to provide services to the parent for the purpose of facilitating reunification of the family." (*In re Jesse W.* (2007) 157 Cal.App.4th 49, 59.) Reunification services for a parent of a dependent child under the age of three are generally limited to six months, but may be extended to the 12-month date. (§ § 361.5, subd. (a)(1)(B) & 366.21, subd. (e).) Court-ordered services may be extended to a maximum of 18 months after the child was originally removed from parental custody under a heightened showing there is a substantial probability the child will be returned to the parent's custody and safely maintained in the home by that time. (§ § 361.5, subd. (a)(3); 366.21, subd. (f); 366.21, subd. (g)(1); *In re T.G.* (2010) 188 Cal.App.4th 687, 695.) In considering whether there is a "substantial probability" of return to warrant extending services to the 18-month date, the court must find: (1) the parent has consistently and regularly contacted and visited the child; (2) the parent has made significant progress in resolving problems that led to the child's removal from the home; and (3) the parent has shown "the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being and special needs." (§ 366.21, subd. (g)(1)(C).)

Where, as here, the court is required to make factual findings, we review its decision for substantial evidence. (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1232; *In re Basilio T.* (1992) 4 Cal.App.4th 155, 170.) In this regard, we do not consider the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the

evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order and affirm the order even if there is substantial evidence supporting a contrary finding. (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610; *Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1346.) On appeal, the parent has the burden of showing there is no evidence of a sufficiently substantial nature to support the court's finding or order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

B

Here, the evidence showed Liliana consistently and regularly visited L.R. (§ 366.21, subd. (g)(1)(A).) However, there was no showing Liliana made significant progress in addressing the protective issues or that she has the capacity and ability to complete the objectives of her treatment plan and provide for L.R.'s safety and well-being. (§ 366.21, subd. (g)(1)(B) & (C).)

Although Liliana received more than two years of services, including therapy, substance abuse treatment and parenting classes, she was unable to consistently implement what she had learned. She continued to make poor decisions; failed to consider her own or L.R.'s safety; had no regard for the truth; minimized the amount she drank when arrested for driving under the influence; tried to mislead the social worker about her burglary arrest; took no responsibility for her bad decisions; and had little understanding of how to be a responsible adult and parent. The court was entitled to accept the social worker's opinion, supported by facts in the record, that Liliana had not made significant progress in resolving problems that led to L.R.'s dependency. We

cannot reweigh the evidence or substitute our judgment for that of the juvenile court. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 53.)

Moreover, the evidence showed Liliana would not be able to complete the objectives of her treatment plan and provide for L.R.'s safety and well-being. Mack testified Liliana could meet her therapeutic goals in the next four months, but she also said this would be difficult if visitation with L.R. remained supervised. Even though Liliana attended 32 therapy sessions, Mack's report noted she needed "intensive trauma work" to improve her individual functioning and reduce the risk of exposing L.R. to domestic violence. Arellano testified Liliana would be able to complete the year-long substance abuse program, but she had not yet submitted her "step one" or any verification that she had a sponsor. Additionally, Liliana had completed barely half of her one-year parenting course. From this, the court could reasonably find Liliana could not provide a safe environment for L.R. despite having had ample time to make positive and significant changes in her life.

L.R. was removed from Liliana's custody at birth and had been a dependent for more than two years. Liliana received services beyond the statutory 12-month limit for a child under the age of three. (§ 361.5, subd. (a)(1)(B).) Nevertheless, L.R. could not be returned to Liliana's custody due to a substantial risk of detriment. At this point, the focus of the proceedings shifts to the child's need for stability and permanence. (*Denny H. v. Superior Court* (2005) 131 Cal.App.4th 1501, 1509-1510.) Substantial evidence supports the court's order terminating services and setting a section 366.26 selection and implementation hearing. (*V.C. v. Superior Court* (2010) 188 Cal.App.4th 521, 529-530.)

II

Liliana contends the court abused its discretion by denying her request for unsupervised visits with L.R. Liliana asserts she was able to apply the parenting skills she learned; she and L.R. were bonded; she had been sober for five months; and she had partially met her therapy goals. Thus, she claims, L.R.'s safety would not be jeopardized and it would be in her best interests to allow unmonitored visits.

A

The juvenile court defines a parent's visitation rights by balancing the parent's interests in visitation with the child's best interests. (*In re Jennifer G.* (1990) 221 Cal.App.3d 752, 757; § 362.1, subd. (a)(1)(A) ["Visitation shall be as frequent as possible, consistent with the well-being of the child"]; § 366.21.) Restrictions on parental visitation are proper if they are consistent with the child's best interests under the particular circumstances of the case. (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1009; *In re Clara B.* (1993) 20 Cal.App.4th 988, 999.)

The court has broad discretion in making visitation orders, which we review for abuse of discretion. (*In re Lee G.* (1991) 1 Cal.App.4th 17, 26-27; *In re Julie M.* (1999) 69 Cal.App.4th 41, 48-51.) In this regard, the juvenile court's order will not be disturbed on appeal unless the court has exceeded the limits of legal discretion by making an arbitrary, capricious or patently absurd determination. When two or more inferences reasonably can be deduced from the facts, we have no authority to reweigh the evidence or substitute our judgment for that of the juvenile court. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319; *In re Tanis H.* (1997) 59 Cal.App.4th 1218, 1226-1227.)

B

Here, the evidence showed Liliana had a pattern of making poor decisions, including repeatedly violating the restraining order against Robert, lying to the social worker, driving under the influence of alcohol and shoplifting in the company of a minor one month before the 12-month review hearing. Despite receiving services for more than two years, Liliana did not resolve the problems that led to L.R.'s removal from her custody, and she was not able to show she could make good decisions for L.R. or provide for her safety, protection and well-being. Although Liliana's substance abuse counselor had no concerns about unsupervised visits, other evidence indicated Liliana did not take responsibility for her poor judgment and she did not understand the consequences of her behavior. From this, the court could reasonably find it was not in L.R.'s best interests to order unsupervised visits for Liliana.

DISPOSITION

The petition is denied. The request for stay is denied.

IRION, J.

WE CONCUR:

BENKE, Acting P. J.

NARES, J.